

# **Exhibit A**

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CAUSE NO. 26642

JERRY DELL DAVIS, ET AL        ) IN THE DISTRICT COURT  
                                  )  
Plaintiffs                       )  
                                  )  
VS.                               ) MILAM COUNTY, TEXAS  
                                  )  
ABLE SUPPLY COMPANY, ET AL     )  
                                  )  
Defendant                        ) 20TH JUDICIAL DISTRICT  
\*\*\*\*\*

VIDEO ORAL DEPOSITION OF

DR. DAYTON PROUTY

JANUARY 14, 2000

VOLUME 2 OF 2

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

DR. DAYTON PROUTY, produced as a witness at the  
instance of the Plaintiff, and duly sworn, was taken  
in the above-styled and numbered cause on the 14th of  
January, 2000, from 10:10 a.m. to 12:22 p.m., before  
OLGA GUTIERREZ, CSR in and for the State of Texas,  
reported by machine shorthand, at the home of  
Dr. Dayton Prouty, 241 Whispering Woods, Rockport,  
Texas pursuant to the Texas Rules of Civil Procedure  
(and the provisions stated on the record or attached  
hereto).

\* \* \* \* \*

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## APPEARANCES

FOR THE PLAINTIFF(S), DR. DAYTON PROUTY.

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ALSO PRESENT: MS. BONNIE LOU PROUTY

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## EXHIBITS

NO DESCRIPTION PAGE

1 - Montana State Board of Health, Division of  
Disease Control, A Report on an Industrial  
Hygiene Study of The Zonolite Company of  
Libby Montana (August 8-9, 1956) 4  
2 - Letter (8/2/44) from B K. Kilbourne, M.D. 4  
3 - Article Excerpt Entitled "Asbestos  
Production Useless" 4  
4 - Awards Ceremony Pamphlet- College of  
Veterinary Medicine Michigan State University  
(10/3/97). 4

2 (Pages 2 to 5)

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1 those hazards?

2 MR. SMITH: Objection, form.

3 A. There's no way he would have allowed me to

4 work there. My father and I had a very close, loving

5 relationship. We did many, many things together.

6 There's no way he would have allowed me to work there

7 if he had known of the health hazards.

8 Q. (BY MR. KRAUS) Now, in addition to your

9 work at the plant, you've actually used

10 asbestos-containing Zonolite products yourself,

11 haven't you?

12 A. Yes, many times.

13 Q. Okay. Give the jury some examples of -- of

14 times when you've used asbestos-containing Zonolite

15 products.

16 A. Well, I've used it many times both in home

17 remodeling and in clinic remodeling, veterinary

18 clinic remodeling, both in Belleville, Michigan and

19 in Corpus Christi, Texas.

20 Q. Have you used the high temp cement that you

21 described?

22 A. I used it in my parents' home. When they

23 purchased a new hot water heater, I mixed up the

24 Zonolite high temperature cement and padded it around

25 to insulate the hot water heater and the hot water

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1 pipes that went from the hot water heater until they

2 disappeared into the wall.

3 Q. Is this the same type of Zonolite high

4 temperature cement that you described earlier mixing

5 with asbestos?

6 A. It's exactly the same products, yes.

7 Q. When you mix a bag of Zonolite high

8 temperature with water to apply, what are the

9 conditions?

10 A. Well, I did it in a bucket. And as you

11 first add the water, it's a -- very dusty and fluffs

12 up. And as -- as you mix it with your hands and add

13 the adequate amount of water, it becomes a

14 cement-like slurry that you then -- And it has enough

15 adhesiveness to it that as you pick it up with your

16 hands you can pat it onto a vertical surface and it

17 will stick to it.

18 Q. All right. And the house fill that you

19 mentioned, when you use -- fill up a wall with the

20 house fill insulation in its ordinary way of being

21 used, what are the conditions like when you're

22 working with that product?

23 A. Well, you pour it out of these big four

24 cubic foot bags. And, of course, it's extremely

25 dusty when you do that.

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1 Q. Let me show you what I've had the Court

2 Reporter mark as -- as Prouty Exhibit 1. And,

3 Dr. Prouty, this is a -- a report from the Montana

4 State Board of Health, entitled "A report on the

5 Industrial Hygiene Survey of the Zonolite Company of

6 Libby, Montana, August 8th and 9th, 1956." And

7 before I hand it to you, I'm going to quote from

8 Page 3 of that report, paragraph entitled,

9 "Toxicity."

10 "A review of the literature indicates

11 that vermiculite or the dust from this material is

12 not especially toxic and is generally included only

13 as a nuisance dust. However, the asbestos dust in

14 the dust in the air is of considerable toxicity and

15 is a factor in the consideration of reducing

16 dustiness in this plant."

17 Is that something you would have liked

18 to have known when you were working at the Zonolite

19 facility?

20 A. I would have loved to have known when I

21 was -- I wouldn't have been working at the Zonolite

22 plant if I would have known that.

23 Q. Now, this was 1956, this was after you quit

24 working there.

25 A. That's correct.

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1 Q. You were in the plant after 1956; is that

2 correct?

3 A. Many times.

4 Q. Did you see any change in terms of the

5 health precautions that were taken in the Dearborn

6 plant?

7 A. I never saw any changes in the dustiness of

8 it.

9 Q. This report on Page 2 references that in

10 1944, the last study of the plant was made. Would

11 you have liked to have known that Zonolite was having

12 the Libby, Montana facility studied for dust health

13 hazards as early as 1944 before you went to work for

14 them?

15 A. I would have liked to have had that

16 information.

17 Q. And this information in this report was not

18 information that you had when you worked at Zonolite;

19 is that correct?

20 A. That's correct.

21 Q. With respect to the reference on Page 2

22 there to a 1944 report, I'm going to hand you what

23 the Court Reporter marked as Prouty Exhibit 2.

24 An August 2nd, 1944 letter from

25 Dr. Kilbourne of the Montana Department of Health to

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<p>1 Mr. John Meyers of the Universal Zonolite Company in 2 Libby, Montana. 3 Dr. Kilbourne writes, "I am forwarding 4 you herewith a copy of the report of a recent visit 5 to your mine and mill by the Division of Industrial 6 Hygiene." 7 It is indeed gratifying to note that 8 you have made such extensive and successful efforts 9 to control the dust hazards inherent in your 10 operations." 11 You see? Did I read that correctly, 12 Dr. Prouty? 13 A. Yes, you did. 14 Q. Would you have liked to have known that 15 there were dust hazards inherent in Zonolite's 16 operations in 1944 and thereafter? 17 A. Yes, I would have. 18 MR. SMITH: Objection, form. 19 Q. (BY MR. KRAUS) Answer again because of the 20 objection. 21 A. I -- I would liked to have had that 22 information at that time. 23 Q. Were there extensive efforts made to control 24 the dust hazards in the Zonolite facility you worked 25 in in Dearborn?</p>	<p>1 Q. Would you have liked to have known what 2 Zonolite knew, that as early as 1927 they were aware 3 that there was asbestos in the Libby vermiculite? 4 A. I would have liked to have known that. 5 Q. All right, sir. I want to shift gears for a 6 minute and talk about some other potential exposures 7 that you had. 8 Now, you're a do-it-yourselfer, aren't 9 you? 10 A. Yes. 11 Q. Throughout your life, have you engaged in 12 repairs and remodeling of the homes in the veterinary 13 offices where you worked? 14 A. I always did what I could, yes. 15 Q. Have you done joint- -- joint compound work 16 yourself? 17 A. Many times. 18 Q. Describe briefly for the jury what that is. 19 A. Well, where two pieces of Sheetrock, the 20 drywall come together and there's a crack, you cover 21 it with the joint compound and then you add paper to 22 it and more joint compound. And you let this process 23 dry, and sand it down until it's smooth and very, 24 very even. And you add more joint compound. You do 25 this two or three times, letting it dry and sanding</p>
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<p>1 MR. SMITH: Objection, form. 2 A. I never saw any effort made to control dust 3 production at the Dearborn plant. 4 Q. (BY MR. KRAUS) I'm going to show you a 5 newspaper article from 1967 from a Montana 6 newspaper. And I'm going to refer you to the 7 beginning, where it says "Editor" -- the -- the 8 headline of this document -- or this article is 9 "Zonolite gets expert opinion, asbestos production 10 useless." And it begins, "Editor's note: The 11 following article and letters appeared in the June 12 30th, 1927 issue of the Flathead Monitor." 13 Where is Flathead? Do you know where 14 that is? 15 A. It's in Montana. 16 Q. Under the headline, quote, says, "Libby 17 asbestos deposit not commercially valuable." And it 18 is an open letter to the shareholders of the Zonolite 19 Company. "So much publicity has recently" -- "has 20 been recently given the occurrence of amphibole 21 asbestos in the Rainy Creek mining district in which 22 our Zonolite deposit is located." 23 Did I read the highlighted portion 24 correctly, Dr. Prouty? 25 A. Yes, you did.</p>	<p>1 it in between until you have a surface that's 2 cosmetically smooth enough that you can go ahead and 3 paint it or wallpaper it. 4 Q. What are the conditions like when you're 5 sanding the dry joint compound down? 6 A. It's extremely dusty. You end up white. 7 Q. And what are the conditions like when you're 8 pouring the joint compound in a bucket and mixing it 9 with water? 10 A. Well, it's very dusty until you get it well 11 mixed with the water. 12 Q. Did you breathe the dust from the joint 13 compounds you used in the '50s and the '60s? 14 MR. OGDEN: Objection, form. 15 A. Undoubtedly every time I used it I had to 16 breathe the dust. 17 Q. (BY MR. KRAUS) What years -- what decades 18 do you recall this kind of joint compound work? 19 A. The '50s, the '60s and '70s. 20 Q. And did you breathe the dust from the joint 21 compounds you used in the 1950s and the 1960s and the 22 1970s? 23 MR. OGDEN: Objection, form. 24 A. Every time I used it, I breathed the dust. 25 Q. (BY MR. KRAUS) Now, you don't have a</p>

10 (Pages 34 to 37)

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1 specific recollection of the names on the bags of the  
 2 joint compound; is that correct?  
 3 A. Not for any specific job that I did.  
 4 Q. Okay. And tell me the names, the brand  
 5 names that you associate with the joint compound work  
 6 you've done over the years.

7 MR. OGDEN: Objection, form.

8 A. Well, the various brand names that I  
 9 remember is being ones that I used were EZ Tex. They  
 10 were U.S. Gypsum and Gold Bond brand.

11 MR. OGDEN: Objection, nonresponsive.

12 Q. (BY MR. KRAUS) Have you also laid asbestos  
 13 floor tile?

14 MR. OGDEN: Objection, form.

15 A. Yes, I have.

16 Q. (BY MR. KRAUS) Okay. Have you done tiling  
 17 work and flooring work in the remodeling that you've  
 18 done?

19 A. Yes, I did.

20 Q. Okay. What products do you recall using,  
 21 what brand names of products do you recall using for  
 22 the floor tiling work that you did?

23 A. The brand name that I recommend using on  
 24 several occasions was Armstrong tile.

25 Q. And do you recall what type of Armstrong

1 Within about two years we outgrew that  
 2 facility, and we bought some property in Belleville.  
 3 It had a home, and it had what had been a garage and  
 4 had been converted into an apartment. And so, we  
 5 remodeled that apartment facility into a veterinary  
 6 clinic.

7 And during the time that we stayed in  
 8 Belleville, we put additions and enlargements on that  
 9 veterinary clinic on two different occasions.  
 10 Developed a very successful practice there.

11 And in 1972, we sold that practice and  
 12 moved to a -- a city in Michigan's upper peninsula on  
 13 the shore of Lake Superior, where I moved into a  
 14 practice with two other veterinarians there. And we  
 15 had a veterinary practice that I continued in until  
 16 1976.

17 Q. Now, what's the name of that city where you  
 18 were from '72 to '76?

19 A. Marquette, Michigan.

20 Q. Why did you move up to the upper peninsula?

21 First off, is that up by Canada?

22 A. Well, yes. It's on the south shore of Lake  
 23 Superior, and all of the northern shores is  
 24 Canadian. It's -- it's extremely far north.

25 Q. Why did you move up there?

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1 tile it was?

2 A. They called it Armstrong asbestos floor  
 3 tile.

4 MR. OGDEN: Objection, nonresponsive.

5 Q. (BY MR. KRAUS) Did you actually lay that  
 6 tile yourself?

7 A. Yes, I did.

8 Q. Did you have occasions to cut that tile?

9 A. Yes.

10 Q. Did you have occasions to saw that tile?

11 A. Yes.

12 Q. Is there some dust associated with that?

13 A. Some dust.

14 Q. Now, we talked about your graduation from  
 15 vet school in '57 and -- and -- and your retirement  
 16 because of your cancer in '99. Can you briefly  
 17 outline for the jury your career as a veterinarian  
 18 between 1957 and '99.

19 A. Yes. When I graduated from veterinary  
 20 school in East Lansing, Michigan, we moved to  
 21 Belleville, Michigan, where we rented a -- living  
 22 quarters. And it had a two-car garage next door,  
 23 which we were allowed to use and clean out and  
 24 remodel it into a small veterinary clinic. And  
 25 that's how our practice got started.

1 A. The main reason was because by 1972 Detroit  
 2 had undergone such social degradation, in my opinion,  
 3 that I no longer wanted to raise my children in the  
 4 environment that we found ourselves in. I wanted  
 5 to -- to get to a -- a better place to raise my  
 6 children.

7 Q. And why did you -- And where did you go when  
 8 you left Marquette in the upper peninsula in 1976?

9 A. Well, by that point, we decided we needed to  
 10 live in a warmer climate and we wanted to be close to  
 11 water where we could sail, because that had become  
 12 our hobby. And we picked Corpus Christi, Texas. And  
 13 when we sold out in Michigan, we moved to Corpus  
 14 Christi, Texas and developed another small animal  
 15 practice there.

16 Q. And you were in your 40s at that time?

17 A. Yes, I was 43.

18 Q. Did you have any connection at all with  
 19 Corpus Christi?

20 A. No, sir, we didn't know a sole there when we  
 21 moved to Corpus Christi.

22 Q. That must have been a bit of an adventure?

23 A. It was a very big adventure. And -- and it  
 24 turned out to be a very successful adventure.

25 Q. And you've lived here on the Texas Gulf

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<p>1 or that's just the name?</p> <p>2 A. Just Harold Harris.</p> <p>3 Q. When you used those commercial carpenters,</p> <p>4 did they buy the products that were used in the</p> <p>5 construction or did you buy them?</p> <p>6 A. I think both. But I can't be specific.</p> <p>7 Q. Okay. So, you don't know if they would have</p> <p>8 bought the --</p> <p>9 A. I don't know if they would have bought all</p> <p>10 of it or if -- or if I did.</p> <p>11 Q. And you don't know if they had bought --</p> <p>12 They could have bought the joint compound, also, you</p> <p>13 don't -- you can't say one way or the other?</p> <p>14 A. I can't recall.</p> <p>15 Q. Okay.</p> <p>16 MR. SCHREIBER: That's all the</p> <p>17 questions I have. Thank you.</p> <p>18 THE WITNESS: Thank you.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MR. MINTON:</p> <p>21 Q. Dr. Prouty, Darrell Minton again.</p> <p>22 Do you recall earlier you had the short</p> <p>23 memory lapse on identifying the raw asbestos? And I</p> <p>24 just wanted to ask you one time, given it's been so</p> <p>25 many years and we did at least have a little memory</p>	<p>1 VIDEOGRAPHER: The time is 12:15.</p> <p>2 We're back on record.</p> <p>3 MR. KRAUS: Dr. Prouty, I just have a</p> <p>4 few follow-up questions.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. KRAUS:</p> <p>7 Q. (BY MR. KRAUS) First off, did you on</p> <p>8 occasion wear asbestos gloves when you were a</p> <p>9 veterinary student in school?</p> <p>10 MR. STONE: Object, form. Objection.</p> <p>11 leading.</p> <p>12 A. Yes, I did.</p> <p>13 Q. (BY MR. KRAUS) With respect to the -- the</p> <p>14 co-workers that you were asked about at the Zonolite</p> <p>15 plant on cross-examination, there's one co-worker you</p> <p>16 didn't name; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Who's that?</p> <p>19 A. My brother.</p> <p>20 Q. And what's his name?</p> <p>21 A. Donald Prouty.</p> <p>22 Q. Did Donald work in the summers at the</p> <p>23 Zonolite plant just like you did?</p> <p>24 A. Exactly the same. He started a year</p> <p>25 earlier, because he was a year older. He quit a</p>
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<p>1 lapse, did -- are you absolutely positive that the</p> <p>2 bag said "Flintkote Mines" on it?</p> <p>3 A. I don't remember the word "mines" on it.</p> <p>4 Q. You just remember "Flintkote"?</p> <p>5 A. Yeah.</p> <p>6 Q. Did it say incorporated or --</p> <p>7 A. I don't recall.</p> <p>8 Q. -- limited or --</p> <p>9 A. No, I don't.</p> <p>10 Q. You just remember the word "Flintkote"?</p> <p>11 A. That's correct.</p> <p>12 Q. Have you ever heard of any other companies</p> <p>13 similar to that? Have you ever heard the word</p> <p>14 "Flintkote" associated with any other company or any</p> <p>15 other product, any other material?</p> <p>16 A. Not to my knowledge.</p> <p>17 Q. Okay.</p> <p>18 MR. MINTON: Pass the witness.</p> <p>19 MR. KRAUS: Anybody else?</p> <p>20 I have a little redirect. I need -- We</p> <p>21 need to take a quick break.</p> <p>22 I need to talk to you about something.</p> <p>23 VIDEOGRAPHER: The time is 12:07.</p> <p>24 We're going off the record.</p> <p>25 (Off the record.)</p>	<p>1 year --</p> <p>2 Q. I'm sorry.</p> <p>3 A. He quit a year earlier, because he went into</p> <p>4 the Air Force in the Korean War.</p> <p>5 Q. Summers of '46 to '50 for Donald?</p> <p>6 A. That's correct.</p> <p>7 Q. Did he do essentially what you did?</p> <p>8 A. Yes, essentially the same job.</p> <p>9 Q. All right. And you were also asked whether</p> <p>10 any family members had ever been diagnosed with an</p> <p>11 asbestos-related disease. Do you recall that?</p> <p>12 A. Yes, I recall that.</p> <p>13 Q. Well, let me ask you a slightly different</p> <p>14 question: Have any of your family members ever, on a</p> <p>15 medical examination, shown any evidence of asbestos</p> <p>16 exposure?</p> <p>17 A. Yes, they have.</p> <p>18 MR. OGDEN: Objection, form.</p> <p>19 Q. (BY MR. KRAUS) Can you tell us about that?</p> <p>20 A. On my father's autopsy report, it was noted</p> <p>21 that he had asbestos in his lung tissue.</p> <p>22 Q. How about your brother, Don?</p> <p>23 A. On radiographic examination of his lungs for</p> <p>24 a routine physical, it was noted by the radiologist</p> <p>25 that he has calcified areas in his lungs probably due</p>

25 (Pages 94 to 97)